



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-1041]

RIN 1625-AA00

Safety Zones; New Year's Eve Fireworks Displays within the Captain of the Port Miami Zone, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary safety zones during New Year's Eve fireworks displays on certain navigable waterways in Biscayne Bay and Palm Beach, Florida. These safety zones are necessary to protect the public from the hazards associated with launching fireworks over navigable waters of the United States. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the three safety zones unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective from 10:00 p.m. December 31, 2012 until 12:30 a.m. January 1, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-1041. To view documents mentioned in this preamble as

being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Junior Grade Mike H. Wu, Sector Miami Prevention Department, Coast Guard; telephone (305) 535-7576, e-mail Mike.H.Wu@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for

good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive all Marine Event Permit Application information regarding the fireworks displays until November 16, 2012. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the fireworks displays. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the fireworks displays.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public from the

hazards associated with the launching of fireworks over navigable waters of the United States.

C. Discussion of Rule

Multiple fireworks displays are planned for New Year's Eve celebrations throughout the Captain of the Port Miami Zone. The fireworks will be launched from barges and will explode over navigable waters of the United States.

The Coast Guard is establishing three temporary safety zones for New Year's Eve fireworks displays on Monday, December 31, 2012 on navigable waters of the Captain of the Port Miami Zone. The three safety zones are listed below.

1. Miami, Florida. All waters within a 280 yard radius around the barge from which the fireworks will be launched, located 200 yards east of Bay Front Park. This safety zone will be enforced from 10:00 p.m. on December 31, 2012 until 12:30 a.m. on January 1, 2013.

2. Miami Beach, Florida. All waters within a 280 yard radius around the barge from which the fireworks will be launched, located 650 yards northeast of Star Island, and west of the Mondrian Hotel in Miami Beach, FL. This safety zone will be enforced from 10:00 p.m. on December 31, 2012 until 12:30 a.m. on January 1, 2013.

3. West Palm Beach, Florida. All waters within a 280 yard radius around the barge from which the fireworks will be launched, located 650 yards north of Royal Park Bascule Bridge. This safety

zone will be enforced from 10:00 p.m. on December 31, 2012 until 12:30 a.m. on January 1, 2013.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the safety zones unless authorized by the Captain of the Port Miami or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the safety zones may contact the Captain of the Port Miami by telephone at 305-535-4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the safety zones is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the safety zones by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as

supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this rule is not significant for the following reasons: (1) the safety zones will be enforced for a maximum of 2 and a half hours each; (2) non-participant persons and vessels may enter, transit through, anchor in, or remain within the safety zones if authorized by the Captain of the Port Miami or a designated representative; (3) non-participant persons and vessels not authorized by the Captain of the Port Miami or designated representative to enter, transit through, anchor in, or remain within the safety zones may operate in the surrounding area during the enforcement periods; and (4) the Coast Guard will provide advance notification of the safety zones to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and

operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within the three safety zones established by this regulation during the respective enforcement period.

For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the

National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the creation of three temporary safety zones that will be enforced for a total of 31 minutes. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 165.T07-1041 to read as follows:

§ 165.T07-1041 Safety Zones; New Year's Eve Fireworks Displays within the Captain of the Port Miami Zone, FL.

(a) Regulated Areas. The following regulated areas are safety zones:

(1) Miami, FL. All waters within a 280 yard radius around the barge from which the fireworks will be launched, located on Biscayne Bay in approximate position 25°46'32"N, 80°10'56"W. This regulated area will be enforced from 10:00 p.m. on December 31, 2012 until 12:30 a.m. on January 1, 2013.

(2) Miami Beach, FL. All waters within a 280 yard radius around the barge from which the fireworks will be launched, located on Biscayne Bay in approximate position 25°46'55"N, 80°08'41"W. This regulated area will be enforced from 10:00 p.m. on December 31, 2012 until 12:30 a.m. on January 1, 2013.

(3) Palm Beach, FL. All waters within a 280 yard radius around the barge from which the fireworks will be launched, located in the Intracoastal Waterway in approximate position 26°42'32"N, 80°02'48"W. This regulated area will be enforced from 10:00 p.m. on December 31, 2012 until 12:30 a.m. on January 1, 2013.

(b) Definition. The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting

the Captain of the Port Miami in the enforcement of the regulated areas.

(c) Regulations. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Miami by telephone at 305-535-4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners,

and on-scene designated representatives.

(d) Effective Date. This rule is effective from 10:00 p.m. on December 31, 2012 until 12:30 a.m. on January 1, 2013.

Dated: December 7, 2012

C. P. SCRABA

Captain, U.S. Coast Guard

Captain of the Port Miami

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12/21/2012]